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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,480	10/05/2005	Steven P Buysse	2134CONCIPPCTUS	2853
50855	7590	08/29/2008		
Tyco Healthcare Group LP 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 08/29/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,480	<b>Applicant(s)</b> BUYSSE ET AL.	
	<b>Examiner</b> DIANE YABUT	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2008 and 12 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/02/2008</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/15/2008 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 06/02/2008 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 16-17 in claim 1 and lines 18-19 in claim 8, the each of the plurality of stops are recited as "being located distally relative to the pivot," which contradicts the recitation in lines 19-20 of claim 1 and lines 21-22 in claim 8 of "at least one of the stops being located proximal the pivot."

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Stone** (U.S. Pat. No. **5,573,534**) in view of **Appleby et al.** (U.S. Patent No. **6,391,035**) and **Klieman et al.** (U.S. Patent No. **5,827,323**).

Claims 1-4 and 7-9: Stone discloses a handle having an elongated tube **18** affixed thereto, the tube including first and second jaw members **82, 84** attached to a distal end thereof, the jaw members being movable about a pivot from a first position for

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approximating tissue to at least one subsequent position for grasping tissue therebetween, each of the jaw members including an electrically conductive sealing surface, the handle including a fixed handle **14** and a movable handle **16**, the movable handle being movable relative to the fixed handle to effect movement of the jaw members from the first position to the at least one subsequent position for grasping tissue (Figures 1-2), the opposable sealing surfaces including a non-stick material coating which is deposited on the opposable sealing surfaces for reducing tissue adhesion during sealing process (col. 7, lines 25-34), means for connecting the jaw members to a source of electrosurgical energy including a pushrod **22** for connecting a first jaw member to a source of electrosurgical energy (col. 3, lines 15-21, col. 5, lines 60-67 to col. 6, lines 1-4), such that the opposable seal surfaces are capable of conducting electrosurgical energy through tissue held therebetween.

Stone discloses the claimed device except for a plurality of stops, disposed on or disposed adjacent to at least one of the sealing surfaces, the stops being located distally or proximal relative to the pivot, which maintains a minimum separation distance of at least about 0.03 millimeters, or in the range of about 0.03 millimeters to about 0.16 millimeters, between opposable sealing surfaces, and a means for maintaining a closure force in the range of about 3 kg/cm<sup>2</sup> to about 16 kg/cm<sup>2</sup> between opposable sealing surfaces, and also the maintaining means including a ratchet disposed within the fixed handle and at least one complimentary interlocking mechanical interface disposed on the movable handle, the ratchet and the complimentary interlocking mechanical interface providing at least one interlocking position for maintaining a

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closure force within the range of about 7 kg/cm<sup>2</sup> to about 13 kg/cm<sup>2</sup> or about 4 kg/cm<sup>2</sup> to 6.5 kg/cm<sup>2</sup> between opposable sealing surfaces.

Appleby et al. et al. teach a stops **84** and **86**, discretely disposed on or disposed adjacent to at least one of the sealing surfaces of two jaw members **90** and **92**, the stop being located distally relative to the pivot **54** about which each jaw members is movable, which maintains a minimum separation distance (Figure 2; col. 4, lines 44-46). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a stop to maintain a minimum separation device, as taught by Appleby et al., to Stone in order to prevent excessive deflection of the jaws when closed, which may injure tissue.

In addition, although Appleby et al. do not disclose one of the stops being located proximate the pivot, the applicant discloses in the last paragraph of page 14 that the stop may be positioned proximate the pivot or adjacent the seal surfaces, or distal to the pivot. Since applicant has not disclosed that having the stops proximate the pivot solves any stated problem or is for any particular purpose, it appears that the instrument would perform equally well with at least one of the stops being proximate the pivot. Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the at least one of the stops located proximate the pivot, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Although Appleby et al. do not expressly close the minimum separation distance being at least about 0.03 millimeters, or in the range of about 0.03 millimeters to about 0.16 millimeters, between opposable sealing surfaces, it would have been obvious to

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one of ordinary skill in the art to provide this range of values, since it has been held that discovering optimum or workable ranges involve only routine skill in the art.

Klieman et al. discloses a means for maintaining a closure force between opposable sealing surfaces **40** and **44**, the maintaining means including a ratchet **16** disposed within the fixed handle and at least one complimentary interlocking mechanical interface **57** disposed on the movable handle **4**, the ratchet and the complimentary interlocking mechanical interface providing at least one interlocking position for maintaining a closure force (Figures 5A-5B). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a means for maintaining a closure force between opposable sealing surfaces, as taught by Klieman et al., to Stone in order for the surgeon to operably control and maintain the force applied by the jaws to effectively grasp tissue while avoiding injury. Although Klieman et al. does not expressly disclose the closure force being within the range of about maintaining a closure force in the range of about 3 kg/cm<sup>2</sup> to about 16 kg/cm<sup>2</sup> 7 kg/cm<sup>2</sup> to about 13 kg/cm<sup>2</sup> or about 4 kg/cm<sup>2</sup> to 6.5 kg/cm<sup>2</sup> between opposable sealing surfaces, it would have been obvious to one of ordinary skill in the art to provide this range of values, since it has been held that discovering optimum or workable ranges involve only routine skill in the art.

Claims 10-14: Stone discloses the opposable sealing surfaces being manufactured from a non-stick material or a non-stick coating being selected from a group of materials consisting of nitrides and nickel/chrome alloys, including at least one of: TiN; ZrN;

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TiAlN; CrN; nickel/chrome alloys with a Ni/Cr ratio of approximately 5:1; Inconel 600; Ni200; and Ni201 (col. 9, lines 7-44).

Claims 15-17: Stone discloses the handles having an insulative material **30** serving as a coating or sheath disposed thereon (Figure 1, col. 6, lines 5-14).

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731